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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/033,243	12/27/2001	Karen L. Fearon	377882001800	8533
25226 MODDISON 8	7590 08/27/2007 FOERSTER LLP	EXAMINER		
755 PAGE MI	LL RD	DUFFY, PATRICIA ANN		
PALO ALTO, CA 94304-1018			ART UNIT	PAPER NUMBER
			1645	
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			MAIL DATE	DELIVERY MODE
			08/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)	
10/033,243	FEARON ET AL.	
Examiner	Art Unit	
Patricia A. Duffy	1645	

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	Patricia A. Duffy	1645						
The MAILING DATE of this communication appe	ears on the cover sheet with the c	orrespondence add	ress					
THE REPLY FILED FAILS TO PLACE THIS APPLICATI		•						
1. The reply was filed after a final rejection, but prior to or or this application, applicant must timely file one of the follow places the application in condition for allowance; (2) a Not a Request for Continued Examination (RCE) in compliant time periods:	n the same day as filing a Notice of wing replies: (1) an amendment, aff otice of Appeal (with appeal fee) in a	Appeal. To avoid aba idavit, or other evider compliance with 37 C	nce, which FR 41.31; or (3)					
a) The period for reply expiresmonths from the mailing	g date of the final rejection.							
b) The period for reply expires on: (1) the mailing date of this A no event, however, will the statutory period for reply expire I	later than SIX MONTHS from the mailin	g date of the final reject	on.					
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).								
Extensions of time may be obtained under 37 CFR 1.136(a). The date have been filed is the date for purposes of determining the period of exunder 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office late may reduce any earned patent term adjustment. See 37 CFR 1.704(b) NOTICE OF APPEAL	on which the petition under 37 CFR 1. dension and the corresponding amount shortened statutory period for reply orig r than three months after the mailing da	of the fee. The appropr inally set in the final Off	iate extension fee ice action; or (2) as					
2. The Notice of Appeal was filed on A brief in comp	oliance with 37 CFR 41.37 must be	filed within two month	ns of the date of					
filing the Notice of Appeal (37 CFR 41.37(a)), or any exte a Notice of Appeal has been filed, any reply must be filed	ension thereof (37 CFR 41.37(e)), to	avoid dismissal of th	e appeal. Since					
AMENDMENTS 2. M The proposed amendment(s) filed offer a fixed rejection.		will and he make a dis-						
 The proposed amendment(s) filed after a final rejection, They raise new issues that would require further compared to the compared to the	but prior to the date of filing a brief	, will <u>not</u> be entered b	ecause					
(b) They raise the issue of new matter (see NOTE below		TE below),	•					
(c) They are not deemed to place the application in be appeal; and/or		ducing or simplifying	the issues for					
(d) They present additional claims without canceling a	corresponding number of finally rej	ected claims.						
NOTE: (See 37 CFR 1.116 and 41.33(a)).								
4. The amendments are not in compliance with 37 CFR 1.1		mpliant Amendment	(PTOL-324).					
5. Applicant's reply has overcome the following rejection(s):								
 Newly proposed or amended claim(s) would be a non-allowable claim(s). 			_					
7. For purposes of appeal, the proposed amendment(s): a) how the new or amended claims would be rejected is pro The status of the claim(s) is (or will be) as follows:		ll be entered and an e	explanation of					
Claim(s) allowed:								
Claim(s) objected to: Claim(s) rejected: <u>1-4, 9-21, 24, 26,47 and 48</u> .	•							
Claim(s) withdrawn from consideration: <u>5-8 and 27-46</u> .	•							
AFFIDAVIT OR OTHER EVIDENCE								
 The affidavit or other evidence filed after a final action, be because applicant failed to provide a showing of good an was not earlier presented. See 37 CFR 1.116(e). 								
 The affidavit or other evidence filed after the date of filing entered because the affidavit or other evidence failed to showing a good and sufficient reasons why it is necessar 	overcome <u>all</u> rejections under appe	al and/or appellant fa	ils to provide a					
10. The affidavit or other evidence is entered. An explanation	on of the status of the claims after e	ntry is below or attack	hed.					
REQUEST FOR RECONSIDERATION/OTHER								
11. The request for reconsideration has been considered by See Continuation Sheet.		n condition for allowa	nce because:					
12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s).								
13. Other:		ρ.						
•		Pats a Dy						
		Patricia A. Óuffy Primary Examiner	•					
		Art Unit: 1645						

Continuation of 11. does NOT place the application in condition for allowance because: The rejection under 112, first paragaraph is maintained for reasons made of record as lacking enabling written description. The record provides a plethora of reasons and evidence that established a lack of enablement. As to Doucette-Stamm the references teaches the nucleic acids in pharmaceutically accepable carriers at col 39 lines 30-35. Applicant again argues the size difference and that the prior art is not less than 200 nt's. This again is not persuasive, the claim recites "less than about". About is seen to provide an undefined upper limit variability. Applicants arguments are therefore again not reflective of the isntant claim language. "About" is not defined in the specification as filed and 480 is about 200 when the entire nucleic acid of the bacterial genome is geater than one million nt. As such, in the absence of any specific definition in the specification of what "about" encompasses or does not the art is maintained.